CITY OF NEWPORT BEACH
HARBOR COMMISSION AGENDA

Council Chambers – 3300 Newport Blvd.
Wednesday, January 9, 2013 – 6:00 PM

Harbor Commission Members:

Doug West, Chair	**Brad Avery**	**Duncan McIntosh**
Karen Rhyne	**Paul Blank**	**David Girling**
Ralph Rodheim		

Staff Members:

Chris Miller, Harbor Resources Manager
Shannon Levin, Harbor Resources Supervisor

Council Liaison:

Nancy Gardner

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1) CALL MEETING TO ORDER

2) ROLL CALL

3) PLEDGE OF ALLEGIANCE

4) PUBLIC COMMENTS

Public comments are invited on agenda and non-agenda items generally considered to be within the subject matter jurisdiction of the Commission. Speakers must limit comments to three (3) minutes. Before speaking, we invite, but do not require, you to state your name for the record. The Commission has the discretion to extend or shorten the speakers' time limit on agenda or non-agenda items, provided the time limit adjustment is applied equally to all speakers. As a courtesy, please turn cell phones off or set them in the silent mode.

5) APPROVAL OF MINUTES from November 14, 2012

6) CURRENT BUSINESS

1. ***Eelgrass in Newport Harbor***
   Mike Josselyn Ph.D., WRA Environmental Consultants, will give a presentation on eelgrass in Newport Harbor. In addition, the City's proposed Newport specific plan for managing eelgrass will be discussed.

   Recommendation:

   1. Receive and file.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least seventy-two (72) hours in advance of each regular meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. If requested, this agenda will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Please contact the City Clerk's Office at least forty-eight (48) hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible at (949) 644-3005 or cityclerk@newportbeachca.gov.

2. ***Regional General Permit (RGP-54) – A Recommended Approach for 2014***
The Harbor Commission's Dredging Subcommittee will discuss the City's Regional General Permit and recommend an approach for Council to consider for the new permit in 2014.

Recommendation:

1. Advise the Harbor Resources Manager to proceed with a Council recommendation for "Option 1" for the upcoming Regional General Permit which includes additional features not included in the current permit. The sediment testing and permitting costs would also be funded by the City.

3. ***Virgin Oceanic Mooring in Newport Harbor – Yearly Review***
The Harbor Commission will conduct the annual review of the vessel Cheyenne's mooring in Newport Harbor.

Recommendation:

1. Receive and file; or

2. The Harbor Commission may reconsider the future of the Cheyenne's mooring in Newport Harbor.

7) SUBCOMMITTEE REPORTS

8) QUESTIONS AND ANSWERS WITH COUNCIL LIAISON ON HARBOR RELATED ISSUES

9) HARBOR RESOURCES UPDATE – Receive and File

10) PUBLIC COMMENTS ON SUBCOMMITTEE REPORTS OR HARBOR RESOURCES UPDATE

11) COMMISSION ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)

12) DATE AND TIME FOR NEXT MEETING:

Wednesday, February 13, 2013

13) ADJOURNMENT

NEWPORT BEACH HARBOR COMMISSION REGULAR MEETING MINUTES
City Council Chambers
Wednesday, November 14, 2012
6:00 p.m.

1) CALL MEETING TO ORDER

The meeting was called to order at 6:00 p.m.

2) ROLL CALL

Commissioners:	Doug West, Chair Brad Avery Paul Blank David Girling Duncan McIntosh Karen Rhyne Ralph Rodheim
Staff Members:	Chris Miller, Harbor Resources Manager Shannon Levin, Harbor Resources Supervisor
Council Liaison:	Mayor Nancy Gardner

3) PLEDGE OF ALLEGIANCE – Chair West

4) PUBLIC COMMENTS

Chair West opened the Public Comments section of the meeting and invited those interested in addressing the Commission, to do so at this time.

Jim Mosher commented on the Brown Act and its application to the Commission, addressed noticing requirements and evading the Brown Act by appointing sub-committees consisting of three Members of the Commission. He addressed the goals set by the Commission including the establishment of sub-committees. He encouraged against conducting Commission business through sub-committees to allow for increased transparency and public input. Mayor Gardner indicated that the City Attorney has not found any problem related to the meetings of sub-committees.

5) APPROVAL OF MINUTES from October 10, 2012

Motion: Commissioner Blank made a motion to approve the minutes of the Harbor Commission regular meeting of October 10, 2012, as submitted. Commissioner Girling seconded the motion, which carried with 6 ayes, 1 abstention (McIntosh). Approved.

6) CURRENT BUSINESS

A. Stand Up Paddle Boarding in Newport Harbor

Commissioner Blank will report on his research on stand up paddle boarding in Newport Harbor.

Recommendation:

1. Receive and file.

Commissioner Blank provided a presentation regarding stand up paddle boarding in Newport Harbor addressing the issue itself, the approach in researching the matter, existing ordinances/laws governing stand

up paddle boarding in Newport Harbor, areas prohibited and restricted zones, designation of a paddle board as a vessel, related rules, law enforcement, similar ordinances, restrictions and actions in surrounding areas, rental locations for stand up paddle boards, conclusions, definition of a "common sense" approach and recommendations.

Interested parties were invited to address the Commission on this item.

Jim Mosher commented on the various Code sections referenced and Commissioner Blank clarified the appropriate and applicable Codes regarding this matter.

Letty Giang volunteered her resources and staff on water safety and water etiquette. She noted that the NSSIA has developed a manual on water safety and paddle boarding and felt it would be a good resource to help with education and public outreach. She announced the visit of the President of the organization, Bruce Gableson, with whom she will speak in order to discuss providing additional guidance to the City.

Discussion followed regarding the importance of boating safety and educating the public to promote the matter.

There being no others wishing to address the Commission, Chair West closed public comments for this item.

Members of the Commission commended the Chair for his report during the previous Council meeting and Commissioner Blank for his current report.

Mayor Gardner suggested providing a formal report to Council when formal recommendations are set, since the item was at their direction.

Chair West suggested deferring formal action until the next meeting when more concrete recommendations can be generated.

Brief discussion followed regarding past incidents related to paddle boarding.

B. Review of the City's Regional General Permit (RGP-54)

The City's Regional General Permit program will be discussed along with some proposed options for the next permit in 2014. Staff is requesting guidance from the Harbor Commission on how best to proceed by the January 2013 meeting.

Recommendation:

1. The Harbor Commission will consider forming a subcommittee to examine various options for the next RGP-54 permit, and will return to the Commission in January 2013 with a recommended approach.

Harbor Resources Manager Chris Miller presented a review of the RGP-54 including background, the need for testing and negotiating with agencies and the possibility of forming a sub-committee to meet as soon as possible to review the matter and return to the Commission with recommendations at its meeting in January, 2013. Mr. Miller presented history, application to shoreline dredging and not in-channel dredging, the permit term, existing restrictions, disposal of spoils, number of applicants throughout the years, the permitting process and applicable fees, eelgrass restrictions, costs of dredging, approval of the current permit, the possibility of streamlining the permitting process and options to be considered.

Chair West indicated that the matter coincides with one of the Commission's objectives and indicated his support. He stated that the sub-committee will be comprised of himself, Commissioner McIntosh and Commissioner Avery.

Discussion followed regarding clarification of shading used within a comparison chart in the presentation, distinguishing between the old and new RGP, the different agencies involved in dredging projects and new restrictions regarding prohibiting dredging near eelgrass areas.

It was noted that a presentation on eelgrass issues will be provided at the Harbor Commission meeting in January, 2013.

Ensuing discussion pertained to the temporary renewal of the RGP-54 and related requirements, the process for homeowners for obtaining an individual permit (IP) and related costs, subsidies, future impacts regarding private slips, making the process easier for homeowners, looking at possible options and alternatives going forward and encouraging increased community outreach.

Discussion continued regarding the existence of previous surveys of homeowners.

Interested parties were invited to address the Commission on this item.

Mark Sites reported he has been in the business of dredging for over thirty years and offered to provide information and encouraged the Commission to contact him. He noted that the average homeowner doesn't get anywhere near 1,000 yards of dredging but rather 100 to 200 yards. He addressed beach disposal and reported they have many homeowners have indicated interest in dredging but are tangled in the permitting process. He addressed the benefits of a barge.

There being no others wishing to address the Commission, Chair West closed public comments for this item.

C. *Discussion of Proposed Approaches for Reorganizing the Harbor Commission*

The Harbor Commission will discuss the ideas for reorganizing the Commission as stated at the Council Study Session on November 13, 2012.

Recommendation:

1. Receive and file.

Chair West noted that the issue was discussed during the recent Council study session.

Mayor Gardner reported that this was an outgrowth of the Tidelands Management Committee and a function of having various discussions and frustration regarding the role of the Commission. She explained the rationale in developing recommendations, noted that the Harbor Commission doesn't deal with water quality issues and stressed the importance of water quality. She reported the proposal will be brought before Council and requested input from the Commission before formal presentation to Council.

Mr. Miller presented details of the proposal including history of the formation of the Council Ad Hoc Committee and the intent to standardize processes and roles for City commissions and committees. He detailed the proposed changes for the Harbor Commission including changing the Harbor Commission to a Harbor Tidelands Management Committee, its mission, membership, Council Members and whether they will be voting or nonvoting members and terms. He addressed the responsibilities and purposes of the newly formed committee.

Mayor Gardner explained the reason why it was suggested that one of the Council Members act as Chair of the Committee. She addressed setting agendas, Brown Act issues, voting and recusal of Council Members when considering issues related to the Committee in which they are members.

Discussion followed regarding the process for setting agendas by a majority of Committee members, challenges with Council Members voting and possible conflict of interest implications, benefits of contributions by Council Members, development of the Harbor Capital Plan by the Tidelands Management Committee, challenges with implementation of the Plan and using the Committee to help with implementation.

Ensuing discussion pertained to establishing the Committee of the Harbor Commission, the benefits of having a Council Members and the importance of getting the job done.

Discussion followed regarding the importance of maintaining the Harbor Commission, the possibility of increasing the frequency of meetings between the Harbor Commission and Council for complete and updated relevant information, the need for a sub-committee with three Council Members to discuss financial issues and impacts and accomplishments of the Harbor Commission.

Members of the Commission commented on the concept and Mayor Gardner noted that no other Commission meets with Council.

Discussion followed regarding the value of the current Commission for City residents in its representation of the Harbor, benefits of having an additional Council liaison and having the Chair be a member of the public.

Ensuing discussion pertained to the current Commission being an independent and free body compared to the recommended Committee which would restrict the independent free-thinking that citizens deserve. The differences between committees and commissions and the perceptions associated with a lack of a Harbor Commission were addressed as well as the importance of maintaining the current structure.

Discussion continued regarding possible trust issues, lack of a consistent framework reinforcing the accountability of the Commission to Council and the importance of the Harbor Commission's role in filtering out ideas that deserve the attention of Council.

Mayor Gardner summarized the desires of the Commission and wondered if it can handle the added responsibilities of the Tidelands Management Plan.

Ensuing discussion pertained to forming sub-committees from Members of the Commission for important items and the importance of having two Council liaisons to the Commission. Discussion followed regarding the possibility of continuing the Tidelands Management Committee as well as the Harbor Commission and values of being a "one-stop-shop" relative to Harbor issues and the importance of public perception.

Mayor Gardner will communicate with the Ad Hoc Committee regarding the present discussions and return to the Commission with information on what will be proposed.

Interested parties were invited to address the Commission.

Dan Purcell commented on the role of the Commission related to boating issues and wondered why there are no other Council Members present at this time. He felt that there should be representation from other City Commissions on the Harbor Commission and commented on a loss of continuity and knowledge between the various commissions and committees.

John Corrough agreed with the previous speaker and referenced written comments which he distributed for review by the Commission and staff. He addressed the need for Commission's experience and expertise and spoke in support of keeping the Harbor Commission as it exists, while assigning additional responsibilities related to Tidelands Management and water quality issues.

There being no others wishing to address the Commission, Chair West closed public comments for this item.

7) <u>SUBCOMMITTEE REPORTS</u>

Regarding the issue of boat slip overhangs, it was noted that the sub-committee currently has no report but will continue its consideration of the item in future meetings.

Regarding the issue of the Lower Castaways, the sub-committee continues with its due diligence and will continue to work on the matter and report back to the Commission at its meeting in January.

8) QUESTIONS AND ANSWERS WITH COUNCIL LIAISON ON HARBOR RELATED ISSUES

Mayor Gardner reported that a community meeting will be held on Monday, November 19, 2012 at 3:30 p.m. on the issue of residential piers and potential fee changes. She addressed recent related Council actions and that there will be an upcoming opportunity to reconsider the issues for possible further adjustments. A City-wide appraisal will occur within five years instead of the originally-proposed ten years.

Discussion followed regarding increased charges by large marina operators putting a burden on recreational boating and location of budget information on this City's website.

9) HARBOR RESOURCES UPDATE – Receive and File

Mr. Miller presented a brief update on the dredging project including areas completed, milestones, and areas yet to be completed, dredging on the back side of Linda Isle and next steps. He addressed the expected completion of the project and measures being taken to facilitate the Christmas Boat Parade.

Discussion followed regarding the anticipated relocation of the Lido anchorage at the end of the dredging project.

Mr. Miller reported on the next Tidelands Management Committee meeting.

Discussion followed regarding the possibility of meeting in December. Chair West suggested there will be no meeting in December, unless a warranted topic arises. The next meeting will be on January 9, 2013 and Mr. Miller presented items that will be on the agenda at that time.

Chair West requested that each Commission Member responsible for the various objectives be prepared to present a status update at the January 9th Commission meeting.

10) PUBLIC COMMENTS ON SUBCOMMITTEE REPORTS OR HARBOR RESOURCES UPDATE

None

11) COMMISSION ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT (NON-DISCUSSION ITEM)

- Overview of eelgrass in Newport Harbor: A presentation by Mike Josselyn Ph.D., WRA Environmental Consultants

12) DATE AND TIME FOR NEXT MEETING:

Mr. Miller noted that the next meeting of the Harbor Commission will be on January 9, 2013.

13) ADJOURNMENT

There being no further business to come before the Harbor Commission, the meeting was adjourned at 8:15 p.m.

CITY OF

NEWPORT BEACH

Harbor Commission Staff Report

Agenda Item No. 1
January 9, 2013

TO: HARBOR COMMISSION

FROM: Public Works Department
Chris Miller, Harbor Resources Manager
949-644-3043, cmiller@newportbeachca.gov

TITLE: Eelgrass in Newport Harbor

ABSTRACT:

Mike Josselyn Ph.D., WRA Environmental Consultants, will give a presentation on eelgrass in Newport Harbor. In addition, the City's proposed Newport specific plan for managing eelgrass will be discussed.

RECOMMENDATION:

1. Receive and file.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Mike Josselyn's presentation will focus on eelgrass and how it is relevant to the marine environment along the coastline and in Newport Harbor. In addition, he will also review the City's proposed Newport specific plan, "Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay – An Ecosystem Based Management Program" which outlines a proposed plan for managing eelgrass in Newport Harbor while balancing the needs of the community with respect to dredging. (See attached.) For many years, the City has been developing this plan with the National Marine Fisheries Service, a federal resource agency which generally takes the lead on eelgrass policy in California. This plan is in the "final draft" stage, and has yet to be formally approved by the regulatory agencies – a task the City has been working on for quite some time.

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find this action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item).

Submitted by:

Chris Miller

Attachment: Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay – An Ecosystem Based Management Program

FINAL DRAFT

EELGRASS PROTECTION AND MITIGATION PLAN FOR SHALLOW WATERS IN LOWER NEWPORT BAY:

AN ECOSYSTEM BASED MANAGEMENT PROGRAM

City Of Newport Beach
Public Works Department
Harbor Resources Division
PO Box 1768
Newport Beach, CA 92658-8915

AUGUST 2012

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TABLES

FIGURES

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SUMMARY OF THE EELGRASS PROTECTION AND MITIGATION PLAN

The purpose of this document is to describe an approach to eelgrass protection and mitigation within Newport Harbor for maintenance dredging activities associated with residential and small commercial docks, including repair of docks, typically undertaken by individual property owners. The proposed plan is focused on the shallow water eelgrass protection and mitigation measures associated with:

(1) Minor maintenance dredging of generally less than 2000 cubic yards under and adjacent to currently authorized private, public, and commercial docks, floats, and piers.

(2) The repair, minor modification, and in-alignment replacement of private residential and small commercial docks, floats, piers, and bulkheads (but not the replacement of bulkheads).

These types of impacts are considered temporary in nature as eelgrass re-establishes itself in these areas as natural rates of siltation occur. For those projects that fall within the above categories and where eelgrass is present or within 15 feet of the activity, mitigation for temporary and/or minor permanent loss of eelgrass would be implemented under an approach ("the Plan") that includes four elements:

(1) **City Assumes Lead Responsibility:** The City will enforce compliance with the Plan, subject to agency oversight.[1] Consistent with its management role, the City, rather than individual residents, will be responsible for surveying and data gathering. This will assure that decisions are made based upon the City's reliable, professionally gathered data, while relieving individual property owners of a burden they generally lack the expertise to effectively carry.

(2) **Eelgrass Management Threshold ("EMT"):** The Plan promotes an ecosystem-based approach; the key metric of eelgrass protection is the maintenance of a sustainable shallow-water eelgrass population[2]. The focus of the City's management will be to protect and promote shallow-water eelgrass populations and as long as the EMT is reached or exceeded, up to 1.5 acres of eelgrass impacts may be permitted per year conditioned on compliance with best management practices for avoiding eelgrass disturbance where possible. Should the shallow-water eelgrass population drop below the EMT, decreased allowable annual impact and increased mitigation will be implemented in a phased manner.

[1] The Plan will be implemented through the Regional General Permit 54 issued to the City by the Corps of Engineers. In addition, other projects within eelgrass habitat that may require individual permits from the Corps could fall, on a case-by-case basis, within the Plan if they occurred within the shallow eelgrass zone in Newport Bay.

[2] The EMT applies to the shallow-water eelgrass population within the Project Area between the bulkhead and pierhead line. Additional areas of shallow water eelgrass are found outside the Project Area to a depth of 10 feet below MLLW.

(3) **Best Management Practices ("BMPs"):** The City will permit the covered projects subject to residents' compliance with best management practice standards. Depending on the size of the population and the location of potential impacts, such best management practices include avoidance, and, when appropriate, active growth techniques, such as seeding using Buoy Deployed Seed Bags (BDSB) and use of TERF™ systems.[3] These BMPs will minimize negative impacts to existing eelgrass and encourage additional population growth.

(4) **Program to Promote Regrowth and Establishment:** The City will work towards developing and testing restoration techniques so that the City is prepared to act if the eelgrass population falls below EMT. In particular, the City will support pilot testing of BDSB and TERF™ strategies, begin an education program to encourage the public to view eelgrass as a valuable component of the ecosystem rather than a nuisance weed that restricts boat and dock use, and where appropriate, consider other methods to create areas suitable for eelgrass.

The Plan provides an incentive to the City and property owners to encourage and promote eelgrass growth in the Bay as the increased eelgrass occurrence will be accommodated by the flexibility of the Plan to allow for greater temporary impacts. In addition, the policy will encourage innovative and effective methods to be used to promote eelgrass growth throughout the Bay where conditions are suitable as opposed to limited project-by-project mitigation.

Minor dock expansion is not included as a part of the current eelgrass management plan; however, the City has very strict standards that apply to dock expansion (including no new, non-commercial docks on Balboa Island). In the future, the City will consider implementing additional measures that would allow for a credit/debit approach to dock expansion where credit can be established for activities that remove surface water coverage within eelgrass areas that can be used for minor dock expansion.

The mitigation elements of the Plan would be implemented via a three-tiered approach (Table 1). The initial EMT has been set by the average of the past three City sponsored surveys of shallow water eelgrass populations within the Project Area[4] as reported in Appendix A. It may be adjusted based on adaptive management actions taken following a review of this Plan and based on subsequent surveys. During the initial two year start up period of this program, the City will be allowed to permit up to an annual total of 1.5 ac/yr of eelgrass impact (no more than 0.375 acres in transitional zone) to accommodate lack of dredging permit activity within eelgrass areas over the past 6 years. In return, City will engage a consultant in 2011 to undertake full harbor survey for eelgrass and to conduct additional oceanographic studies on temperature, light, and salinity conditions in areas occupied by eelgrass.

[3] TERF™ refers to "Transplanting Eelgrass Remotely with Frame Systems." Adult plants are transplanted using a frame system to which the plants are attached.

[4] Shallow water eelgrass outside of the Project Area to 10 feet below MLLW will continue to be surveyed and reported; however, the EMT is set by the eelgrass present between the bulkhead and pierhead lines established in Newport Harbor.

Table 1. Eelgrass Tiers for Activities Occurring in the Shallow Water Eelgrass Zone in Newport Harbor

Shallow Eelgrass in Project Area (Bulkhead to Pierhead Line)		Allowable Impacts to Shallow Water Eelgrass	City of Newport Beach Action
Stable Zone	**Transitional Zone**		
TIER 1			
is at or above long-term mean[i] **Current EMT ≥ 15.7 acres**	is at or above long-term mean **Current EMT ≥ 3.9 acres**	Up to a total 1.5 acres/yr	• Develop, test, and/or improve methods to collect and use eelgrass seeds for deployable seed bagging when needed and to construct or use eelgrass TERF™ devices; • City conducts surveys every two years to determine extent of eelgrass coverage in shallow water eelgrass zone (above 10 feet below MLLW); • Conduct education program to assist the public to see eelgrass as a valuable ecosystem component rather than a nuisance weed that restricts boat and dock use; • Encourage owners to minimize the size of docks and floating structures or utilize docks & floating structures that maximize light penetration; and, • Continue to update best management practices ("BMP") procedures to minimize impacts to eelgrass and to promote eelgrass coverage.
TIER 2			
between the long term mean and the lower 95% confidence limit of that mean **Current < 15.7 to ≥ 14.0 acres**	between the long-term mean and 1.45 acres **Current < 3.9 to 1.45 acres**	Up to a total of 0.75 acres/yr [Within Transitional Zone no more than 25% of surveyed eelgrass from most recent survey (2009-2010) at start of program]	• Implement deployable seed bagging and/or TERF best management practices to restore areas that previously supported eelgrass and at impact areas; • City conducts surveys every two years to determine extent of eelgrass coverage in shallow water eelgrass zone (above 10 feet below MLLW); • Conduct education program to assist the public to see eelgrass as a valuable ecosystem component rather than a nuisance weed that restricts boat and dock use; • Encourage owners to minimize the size of docks and floating structures or utilize docks & floating structures that maximize light penetration; and, • Continue to update best management practices ("BMP") procedures to minimize impacts to eelgrass and to promote eelgrass coverage.

Shallow Eelgrass in Project Area (Bulkhead to Pierhead Line)		Allowable Impacts to Shallow Water Eelgrass	City of Newport Beach Action
Stable Zone	Transitional Zone		
TIER 3			
less than 14 acres	less than 1.45 acres	No more than a total of 0.5 acres/yr [In Transitional Zone, no more than 10% of surveyed eelgrass]	• Individual dock owners to use the current NMFS Southern California Eelgrass Mitigation Policy*;* • City conducts surveys every two years to determine extent of eelgrass coverage in shallow water eelgrass zone (above 10 feet below MLLW); • Mitigation may also be satisfied by City efforts to increase eelgrass population by: o Initiating beach dredging (0.5-2.0 feet deep at MLLW) to open up water volume and depth suitable for eelgrass and implementing TERFs™ or other methods to expand population; and • If shallow water population remains below lowest Tier 2 level (currently 15.5 acres) for two consecutive survey periods after the 2010 survey, City will work with the agencies to determine the cause of the dEMTine and, if necessary, initiate additional actions to improve or create habitat suitable for re-establishment of eelgrass populations to the EMT level.

INTRODUCTION

The purpose of this document is to describe an approach to eelgrass protection and mitigation for small maintenance dredging projects associated with residential and small commercial docks, including repair of docks, within Newport Harbor typically undertaken by individual property owners. This plan is an outcome of the City of Newport Beach Harbor Area Management Plan (HAMP) as issued in April 2010 and approved by City Council in November 2010. The HAMP established certain goals and best management practices to ensure a healthy eelgrass population within the Harbor, including the development of an Eelgrass Management Plan. With the adoption of this Plan by the City and by the responsible resource agencies, the procedures and methods related to eelgrass protection and mitigation that would, within Newport Harbor, modify the Southern California Eelgrass Mitigation Policy (SCEMP) as first developed in 1991 and currently in its 11th revision[5].

Consistent with its role as Newport Bay's primary steward and SCEMP's provision for flexibility, the City developed this new Eelgrass Protection and Management Plan (the "Plan") tailored specifically to Newport Bay's shallow waters adjoining residences. The Plan will govern practices related to a portion of Lower Newport Bay's existing eelgrass population—the shallow water eelgrass zone generally found at depths less than 10 feet below MLLW. Much of the shallow water eelgrass population is located within the area defined by the Pierhead Line and occurs in areas occupied by private piers, docks, and small commercial facilities. The Plan focuses on those impacts which are temporary due to dredging in these shallow waters. Eelgrass is very resilient in these areas and recolonizes areas between dredging events as the areas silt in over time. There appears to be an abundant source of seeds to allow for eelgrass establishment once depths recover in these areas. Because dredging is not occurring in all areas at the same time, there are various stages of eelgrass recovery occurring throughout the harbor.

The Plan will serve the principal goals of protecting and promoting a long-term sustainable eelgrass population while serving Lower Newport Bay's navigational and recreational beneficial uses. The touchstone of the Plan is an ecosystem-based approach that works by protecting a sustainable eelgrass *population* in the Lower Bay and enforcing best management practices that will promote eelgrass growth.

The approach to managing the Harbor's resources embodied in this Plan is consistent with the California Ocean Protection Council's ("COPC") Five Year Strategic Plan to implement ecosystem-based management (EBM) ("COPC 2006"). According to COPC, the goal of EBM is "to maintain an ecosystem in a healthy, productive, and resilient condition so that it can provide the services humans want and need. Ecosystem-based management differs from current approaches that focus on a single species, sector, activity, or concern." EBM recognizes

[5] It is understood that the SCEMP is currently under review for implementation as a state wide plan (California Eelgrass Mitigation Policy) and subject to further revision. As referenced throughout this document under conditions where the SCEMP is used, it is assumed to be the policy in effect at that time.

and acknowledges that there are multiple objectives and benefits provided by marine systems, rather than single ecosystem or species services. Such benefits or services include vibrant commercial and recreational fisheries, biodiversity conservation, renewable energy, and coastal protection. In addition, EMB is adaptable to changing conditions taking into consideration that healthy systems exhibit resilience to disturbances and management measures should consider and adapt to large and small scale factors that affect ecosystem change. The EMB approach is also consistent with the *Final Recommendations of the Interagency Ocean Policy Task Force* (CEQ 2010), which emphasizes the concept of "Coastal and Marine Spatial Planning" for management of coastal resources. The National Marine Fisheries Service has taken a lead role in promoting and implementing EMB within its fisheries, coral reef, and marine sanctuaries management programs. The extension of this approach to eelgrass management in Newport Harbor is proposed in this Plan.

BACKGROUND

The City, as the primary steward of Newport Bay, has invested significant resources to ensure that a healthy eelgrass population thrives in the Bay. For instance, the City has retained experts to develop this Plan, conducted eelgrass mitigation banking projects, engaged contractors to conduct Bay-wide monitoring and surveying of eelgrass distribution using consistent and repeatable methods, and, most importantly, worked to make the Bay more hospitable to eelgrass through the implementation of water quality protection measures. Most recently the City approved a Harbor Area Management Plan (HAMP) that sets an overall goal to “support a sustainable estuary ecosystem able to be integrated with upstream sustainable watersheds and adjacent coastal area systems”. As a result of these extensive efforts, City staff, as well as the scientists and consultants who have been retained to assist the City, have developed considerable data, knowledge and expertise about eelgrass ecology in Newport Bay.

The City, as part of its commitment within the 2010 HAMP, developed this Plan for the shallow water eelgrass population in the Lower Bay that promotes a healthy eelgrass habitat and maintains the Bay’s navigational, commercial and recreational uses. The Plan specifically addresses the temporary impacts to eelgrass from maintenance and repair of private residential and small commercial docks and floats and small maintenance dredging projects associated with those facilities. The Plan consists of four main parts:

- The first part establishes the City of Newport Beach as the primary steward of eelgrass habitat in the Bay by placing the responsibility for approving projects, as well as monitoring, surveying and data gathering on the City rather than on individual property owners. The City, under the Southern California Eelgrass Mitigation Policy, would take lead responsibility for overseeing projects undertaken by private property owners that may impact shallow-water eelgrass, assuring that such projects are consistent with this Plan.

- The second part establishes an Eelgrass Management Threshold (EMT) based on historical survey data and the Bay's estuarine ecology. This number and the thresholds for various actions under the policy would be subject to change based on long-term population data collection undertaken as part of the Harbor wide surveys within the bulkhead to pierhead lines established in Harbor (the "Project Area"). As described in Table 1, permitted projects, subject to compliance with Tier 1 BMPs, would not be allowed to impact more than 1.5 acres of eelgrass in one year as long as the eelgrass population exceeds the EMT. If the population falls below the EMT, but is above the levels as specified under Tier 2, impacts on eelgrass would be limited to 0.75 acre/yr. If the population size falls within the Tier 3 level, impact would be limited to 0.5 acres/yr and the SCEMP replacement ratio would apply for each individual project.

- The third part establishes BMPs for individual dock owners in order to minimize negative impacts and encourage eelgrass population growth, especially following periods when natural events may reduce eelgrass population levels.

- The fourth part establishes a program by which the City will develop, test, and implement methods to promote eelgrass regrowth, as well as public education and includes measures to implement adaptive management as new information is developed.

The City has met with the National Marine Fisheries Service in the development of this Plan and has incorporated the Service's comments and recommendations into the Plan. The National Marine Fisheries Service met with the resource agencies to present the Plan and receive input. In addition, the City has received comments from the Santa Ana Regional Water Quality Control Board and the California Coastal Commission and has revised the Plan to incorporate these comments. The City has initiated some elements of the Plan in 2012 with the funding of oceanographic studies and provision of funding of $10,000 to the Coastkeeper for the testing of various eelgrass restoration techniques.

With approval from the National Marine Fisheries Service, this Plan will substitute for the SCEMP and will be a region specific approach to be used for the activities described in the Plan. Applicants whose projects qualify under the Plan will reference the Plan when proposing work in areas containing eelgrass and the resource agencies will utilize the Plan as a basis for compliance with eelgrass mitigation. The City will prepare annual reports on its progress in implementing the Plan and will maintain records of permits issued under the Plan.

ELEMENTS OF PLAN

1. CITY ASSUMES LEAD RESPONSIBILITY

The City will have responsibility for implementing the Plan, subject to agency oversight. The City's eelgrass survey and maps will replace the requirement for individual applicants to conduct eelgrass surveys. The designation of the various survey areas is shown in Figure 1. In addition, based on survey results to date (2003-2010), a survey will not be required for those areas that have not supported eelgrass in the past[6], for example, portions of the southern shoreline of the Newport Channel west of Bay Island and portions of the western, southern and northern shores of Lido Isle.

Basis for City Responsibility for Surveys

Since 2003, the City has been conducting routine surveys throughout the harbor on eelgrass distribution and density (Table 2). The survey methodology is described in CRM (2010) and the data have been entered into a Geographic Information Database (GIS) maintained by the City's Harbor Resources Division. This information is among the most detailed long-term data set on eelgrass distribution available in Southern California. For portions of the northwestern harbor (e.g., Newport Channel west of Bay Island and portions of Lido Isle), no eelgrass has been found during any of the surveys, whereas in other areas, it thrives from year to year. The distribution of eelgrass in the Lower Newport Bay is related primarily to both light availability and tidal flushing times. Those areas with the most rapid tidal flushing times and best light availability are most likely to be colonized by eelgrass.

Based on the detailed studies completed by the City's consultant, Coastal Resources Management ("CRM"), there are three "eelgrass zones" within the Lower Bay (Figure 2).

> A Stable Eelgrass Zone where eelgrass distribution appears relatively stable from year to year. This zone is located primarily within the Lower Bay and includes the channel entrance, the southern and eastern portions of Balboa Island and Grand Canal, Corona del Mar, and lower Balboa Peninsula. This zone is also characterized by a tidal flushing time of less than 6 days, which contributes to the higher water clarity.
>
> A Transitional Eelgrass Zone where eelgrass is susceptible to year-to-year variation in extent and density. This zone is largely found in the central part of the Lower Bay in areas such as Harbor Island, Linda Isle, the northern and western portions of Balboa Island, and the northern side of the Lido Channel. This zone is characterized by a tidal flushing time of 7 to 14 days and is located in a zone that is influenced by turbidity from San Diego Creek discharge during winter months.

[6] Subject to change if eelgrass is shown to colonize these areas in future years.

An Unvegetated Zone where eelgrass has not been found or is rarely found. This zone is primarily within the western portion of the Lower Bay and also areas of the Upper Bay north of Castaways Park. These areas are characterized by a tidal flushing time of greater than 14 days.

The survey data provides a depiction of eelgrass dynamics in the Lower Bay and, because of their detail, can be used as a substitute for the current site specific survey requirements contained in the SCEMP (see Appendix A showing eelgrass maps for each survey period). The City will conduct these surveys once every two years. For areas of the Harbor where eelgrass has not been found, eelgrass surveys would not be undertaken unless further expansion of eelgrass occurs here. These areas will be scanned during the biennial surveys to determine if eelgrass has expanded to those areas.

Figure 1. Location of sampling areas within the shallow water eelgrass zone of Lower Newport Bay

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Table 2. City-sponsored Shallow-Water Eelgrass Surveys in Newport Harbor (CRM 2010)

Survey Dates	Eelgrass (Ac)	Notes
Dec 2003-Aug 2004	30.2	Largest shallow-water eelgrass population recorded in the harbor. Water quality conditions ideal with low winter rainfall.
Dec 2006 -Oct 2007	23.1	Estimated 7.4 acre decline in eelgrass area primarily around north Balboa Island, Harbor Island, Linda Isle, and Upper Newport Bay.
Dec 2009 – Nov 2010	19.9	Estimated 7 acre decline in transitional zones attributed to strong winter storms that contributed to high turbidity.

Figure 2. Location of Stable, Transitional, and unvegetated eelgrass zones based on CRM (2010)

2. EELGRASS MANAGEMENT THRESHOLD ("EMT")

The EMT concept is an ecosystem-based approach designed to take advantage of years of data, research and knowledge on eelgrass in Newport Bay. The EMT, when coupled with the other parts of this Plan, will benefit the harbor ecosystem and dredging projects undertaken by individual owners within the confines of this Plan and will not have a significant effect on eelgrass resources. Combined with the eelgrass populations in other areas of the harbor, the EMT would allow for eelgrass to persist throughout Newport Bay while accommodating maintenance needs arising from the Bay's other recognized beneficial uses such as navigation and recreation. Individual dock owners' eelgrass transplantation and surveying requirements would be replaced with BMPs, which will minimize potentially deleterious consequences of maintenance projects via avoidance measures, and in the event the population declines below the EMT, will promote the continued proliferation of eelgrass through seeding and other measures.

The proposed approach establishes an EMT threshold over which maintenance dredging and dock repair will be allowed to proceed, so long as the impacts to eelgrass are avoided where feasible and do not exceed 1.5 acres in any one year. The EMT threshold is currently set at the mean of the past three surveys and is based on the areal extent of eelgrass within the Project Area (bulkhead to pierhead line). It is currently set at 15.7 acres for the Stable Zone and 3.9 acres for the Transitional Zone for a total of 19.6 acres. In the future, the EMT will be set by subsequent survey information and subject to review by the City and NMFS based on data and information collected in Newport Bay.

If the shallow-water eelgrass population in the Project Area drops below the EMT , but remains at or above the lower 95% confidence limit for the stable zone and at or above 1.45 acres for the transitional zone (referred to as Tier 2), dredging will not be allowed to impact more than 0.75 acres in any one year. Where appropriate, residents who have been permitted to dredge will be required to employ the BMPs that will actively promote eelgrass establishment.

If the shallow-water eelgrass population drops below the Tier 2 levels, dredging will not be allowed to impact more than 0.5 acres of eelgrass in any one year. In addition, the SCEMP's 1.2:1 replacement ratio will apply, such that if 0.5 acres of eelgrass is impacted, 0.75 acres must be replaced by the project proponent. Or, the City may consider satisfy the replacement requirement, where feasible and cost effective, by deploying TERFs™ and conducting beach dredging to open up suitable water volume and depth for eelgrass. In addition, residents located in eelgrass amenable areas will continue to be required to use seeding to promote eelgrass growth.

During the first two years of the program, a maximum of 1.5 acres/yr (no more than 0.375 acres in the transitional zone) will be allowed to afford some relief from the backlog of projects that have not occurred. In return, the City will engage a consultant in 2011 to undertake a full harbor survey for eelgrass and to conduct additional oceanographic studies on

light, temperature, and salinity to determine possible controlling factors on eelgrass distribution.

Basis for EMT

The determination of 19.6 acres for the EMT was based on three sample periods using similar sampling methodology. The results from the three survey periods of 2003-2004, 2006-2007, and 2009-2010 were grouped by their occurrence within stable and transitional areas of the Harbor for both the Project Area and outside the Project Area (see Appendix A for data tables and maps for each sampling period).

The areas with stable eelgrass populations are influenced by ocean water as they are subject to the higher flushing rates in the portion of the Harbor nearest the inlet channel (Figure 3). As a result, they are less affected by turbidity reduction from inflow of the San Diego Creek into the Upper Bay. There has been little to no dredging for private docks within eelgrass areas during the period covered by the surveys so it is expected that these numbers represent the baseline conditions[7]. In these stable areas, the amount of eelgrass fluctuates less and averaged approximately 15.7 acres for the Project Area in the three survey periods with a standard deviation of 1.5 acres. The 95% confidence limits of the mean were ± 1.7 acres.

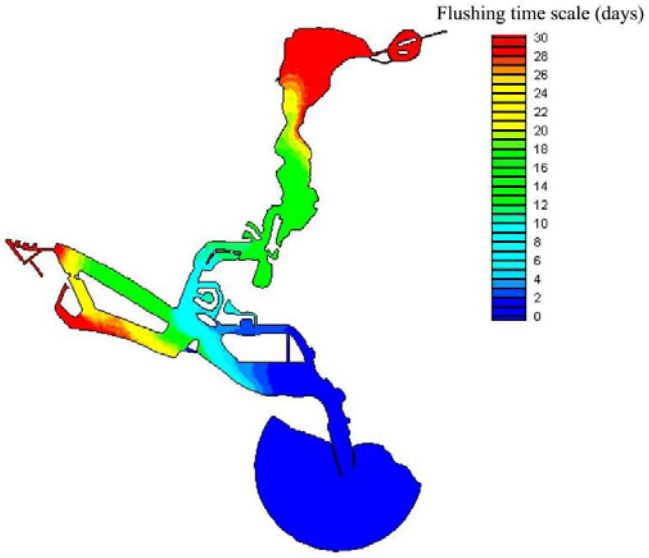

Figure 3. Tidal flushing in days for the Lower and Upper Newport Bay area. Everest Consulting (from CRM 2005)

[7] According to the dredging permit activity log maintained by the City, minimal to no dredging of eelgrass has occurred during this analysis period due to the difficulty and cost of completing mitigation associated with eelgrass impacts so it is assumed that the eelgrass population as measured represents a natural variation from periods of high growth (2003-2004 data) and lower growth due to higher turbidity (most recent data).

The transitional areas appear to be mostly influenced by reductions in light penetration[8] and perhaps lowered salinities during normal to above normal rainfall years. The significant decline observed over the observational period is likely the result of higher rainfall years during the sampling events. Eelgrass in some of the transitional areas can disappear during years of high runoff and low light penetration. This is particularly true for the most recent survey period when strong winter storms in 2009-2010 contributed to high turbidity throughout the Harbor. The variation observed over the three sampling periods is twice as large as that seen in the stable areas. The cooler water temperatures observed in the summer of 2010 may have also stalled recovery by slowing growth (R. Ware, pers. comm.). For the transition zones, the average within the Project Area was 3.9 acres with a standard deviation of 3.4 acres. The 95% confidence limits of the mean were ± 3.8 acres.

The inter-annual variation in the transitional areas contributes to most of the decline of eelgrass that has been observed as this area is most influenced by variation on turbidity associated with outflows from San Diego Creek and Upper Newport Bay (Figure 4). Primary emphasis on sustaining eelgrass populations in the Harbor should be placed maintenance of acreage within the stable zone (from which seeds are likely produced to re-establish eelgrass in transitional zones).

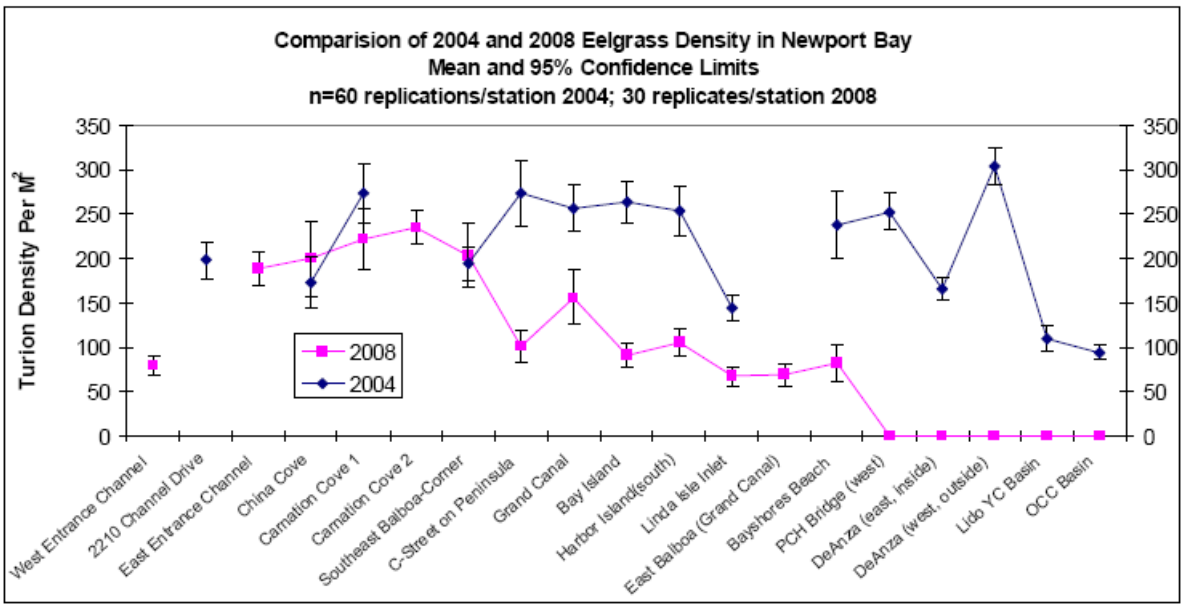

Figure 4. Comparison of 2004 and 2008 eelgrass turion density by location within Newport Bay. Transitional areas showing greatest decline between survey dates. From CRM, 2010

[8] CRM has found that very small differences in mean light intensity can affect whether eelgrass will establish and grow at specific locations (CRM 2010). Based on light measurements taken in 2008-2009, CRM observed that the mean light intensity in eelgrass occupied areas was 354 µmol m^{-2} s^{-1} compared to 294 µmol m^{-2} s^{-1} and that generally light energy in eelgrass beds was greater by approximately 100-200 µmol m^{-2} s^{-1}.

In addition to restrictions on the amount of eelgrass that could be impacted within stable and transitional zones each year, the location of those impacts would be restricted. Because dredging requires substantial pre-project planning and the cost of dredging for small projects is high, adjoining landowners may wish to combine their efforts and conduct dredging over several properties. This may have an impact on the local population of eelgrass, therefore, it is proposed that no contiguous properties will impact over 0.5 acres of eelgrass when EMT is exceeded and no more than 0.3 acres when shallow water eelgrass population is within Tier 2. Because there are some areas of the Bay such as Carnation Cove and portions of Balboa Island and Channel where this restriction may present an economic hardship, especially as the eelgrass population increases, should any eelgrass impacts exceed these restrictions, written approval from the NMFS would be obtained to exceed these levels.

Maintaining the EMT

During any one year, only a few property owners are likely to submit requests for dredging or dock expansion. Extrapolating from eelgrass mapping data, which indicate how much eelgrass acreage is within 15 feet of existing private piers and docks (see above paragraph), and assuming that approximately 10% of the possible private property owners may actually dredge during a particular year, the most likely scenario is less than 0.2 percent or 0.4-0.6 acres of eelgrass habitat might be impacted by residential projects. This impact is much less than the larger natural, inter-annual variation of eelgrass that occurs for other reasons. Annual variation of +/- 7 acres can be expected based on the three annual surveys conducted to date. This decline is likely due to natural variation based on rainfall, inflow from San Diego Creek, and off-shore water temperatures as virtually no private dredging occurred during this time period.

In addition, the City will support the testing of methods to collect eelgrass seeds for seed bagging and conduct pilot testing of seed bagging. With a healthy EMT, there will be ample seeds available in this well-mixed tidal system that most viable areas will be supplied with seeds naturally, such that seeding would be unnecessary. Although seeding is unnecessary when the EMT is exceeded, by testing the strategy, the City will be well prepared to deploy the strategy in the event the population of shallow-water eelgrass falls below the EMT.

The City will also construct and test the use of eelgrass TERFs™, which will allow the transplanting of adult eelgrass plants in the event it becomes desirable to supplement seeding efforts.

The City will begin an education program to assist residents in coming to view eelgrass as a valuable ecological resource rather than a nuisance weed that impedes navigation and recreation.

Below the EMT

In addition to the BMPs described for Tier 1, if the shallow-water eelgrass population in

the Project Area is below the EMT within the Tier 2 level, the City will require residents to make active regrowth efforts by deploying seed bags. The City will limit direct impacts to eelgrass from dredging to no more than 0.75 acre per year.

If the population is within the Tier 3 level, the SCEMP's 1.2:1 required replacement ratio (or any subsequently determined ratio in the revised SCEMP) will be implemented by the project proponent. Impacts to eelgrass from dredging will be limited to no more than 0.5 acres annually. Any eelgrass lost would have to be replaced at a 1.2:1 ratio. Consistent with a more ecosystem-based approach, the replacement ratio could be satisfied by TERFs™, as well as strategic beach dredging designed to open up the appropriate water volume and depth for eelgrass in areas where eelgrass would likely grow but for insufficient water depths.

If population within the Project Area remains in Tier 3 for two consecutive survey periods, the City will evaluate, in conjunction with the agencies, the field data to determine if the cause is related to natural events such as consecutive heavy rainfall years. If no natural causes for this decline can be determined, the City will undertake an adaptive management plan to consider options to increase eelgrass habitat within the Harbor. These actions may include more transplanting in areas that have supported eelgrass in the past but are now unoccupied or other actions to increase areas that would be suitable for eelgrass colonization by natural or artificial means.

3. BEST MANAGEMENT PRACTICES ("BMPs")

The City will require the use of Best Management Practices as part of the review process when owners propose dredging and/or expanding docks within the Project Area appropriate to the Tier level. Permits issued by the City will be conditioned on individual dock owners' compliance with the BMPs.

BASIS FOR BMPs

The purpose of the BMPs is to avoid and minimize the temporary impacts to eelgrass to the extent practicable and, where possible, to implement measures to promote eelgrass establishment. Because SCEMP and the individual permitting process are onerous for individual property owners, many have unnecessarily come to view eelgrass as a nuisance and liability. The overall plan provides incentives to property owners and the City to promote eelgrass establishment as it will reduce costs and time associated with the current permitting and mitigation requirements. The BMPs allow residents to address maintenance needs while promoting eelgrass stewardship.

Depending on site-specific conditions, the BMPs would include the following:

When Shallow-water Eelgrass in the Project Area is in Tier 1

Avoidance Where Practicable: The City will review proposed dredging projects to ensure that avoidance of existing eelgrass beds is maximized to the extent practicable.

Avoidance measures may include reducing the proposed dredging area or shifting the dredging area.

Educate Property Owners: The City will develop a public education program on the importance of eelgrass beds and the reasons they should be protected, so that boat owners and property owners view the establishment of eelgrass as a positive outcome. The program will likely consist of information on the City's web site and a fact sheet attached to permit application packages.

When Shallow-water Eelgrass in the Project Area is in Tier 2

Promote Population Growth: After dredging activity is concluded, the City will require the project proponent to use of Buoyed Deployed Seed Bags (BDSB) to improve seeding adjacent to the disturbed area (Pickerell *et al*. 2006; Boyer *et al.* 2008). This method will allow for natural re-seeding of the temporarily disturbed areas and is likely to be more successful than transplanting adult plants because viable seed will be spread throughout the area and will germinate and survive in those areas best suited for eelgrass. It does not require significant expertise, intensive and expensive site-selection studies, or the use of divers, all of which are needed for transplanting. Seeds may be collected from the area prior to disturbance or from donor beds in the Stable Eelgrass Zone. If, in the experience of the City, there may be others areas more suitable for restoration, the City will direct the placement of the BDSBs in other locations in the Harbor.

When Shallow-water Eelgrass in Project Area is in Tier 3

TERFs™: Transplant Eelgrass Remotely with Frame Systems, which are designed to allow for the stable transplanting of adult plants, will be employed within the area of impact, but may also be used in areas within the stable zone where eelgrass had been observed previously. This would allow for re-establishment within its most suitable habitat area.

Generate Aquatic Habitat for Eelgrass Where Feasible: The City will consider, and where feasible, undertake dredging in shoaled areas to create suitable depths for eelgrass establishment. Generally, shoreline areas are too shallow for eelgrass establishment, but if dredged by 1 to 2 feet, additional water volume could be created, thereby generating additional areas for eelgrass establishment. This type of opportunity may not work in all areas due to the natural repose of the beach profile.[9]

It is expected that BMPs will evolve or additional ones will be adopted over time as the City continues its efforts to acquire more information about the ecology, light requirements,

[9] A demonstration project as contemplated in Section IV may be necessary to show that some areas where aquatic habitat has been filled in by excess sediment dredging will promote eelgrass growth.

and seedling survival rates of eelgrass.

If the shallow water eelgrass population in the Project Area is within the Tier 3 category for two survey periods, the City will undertake a rigorous adaptive management program. The City will examine the field data collected in conjunction with its survey program to determine if the decline is the result of natural causes, e.g. consecutive years of high runoff, or is caused by anthropogenic causes. The City will also work with the agencies to consider more transplanting or seeding methods or creation of suitable areas for eelgrass colonization.

4. PROGRAM TO PROMOTE EELGRASS GROWTH AND ESTABLISHMENT

The City will test eelgrass propagation methods in order to ensure that the EMT is maintained through the use and development of restoration techniques, such as buoyed deployed seed bags (BDSB) (Pickerell *et al*. 2006) and TERFs™ (transplanting eelgrass remotely with frames) (Short and Coles 2001).

BASIS FOR PROGRAM TO PROMOTE GROWTH

The City is committed to minimizing temporary impacts to eelgrass by individual dock owners through BMPs and by confining cumulative overall impacts to no more than 1.5 acres annually when the EMT is met and requiring lesser impacts in the event the shallow-water eelgrass population declines below the EMT. The City has undertaken an extensive monitoring program within the Harbor to assess light levels, salinity, and temperature throughout the year. It is expected that these data can be useful not only in explaining inter-annual differences in eelgrass populations but to also determine areas most feasible for methods that can best promote eelgrass growth.

The City will undertake several programs to provide for expanding eelgrass habitat within the Bay, buttressing the City's ability to respond should the population fall below the EMT:

-- Use Buoy Deployed Seed Bags (BDSB) to disperse seeds into Transitional Eelgrass Zone areas when population levels decline to promote more rapid recovery of eelgrass (Pickerell *et al*. 2006). BDSBs are mesh bags that contain floral inflorescences (with ripened seeds) that are deployed over the area where eelgrass has a potential to grow but has been eliminated by some natural cause such as seasonally low light levels caused by storm events. This method could also be used to improve eelgrass regeneration in areas temporally impacted by dredging that have suitable conditions for eelgrass growth. In San Francisco Bay, BDSBs have been found to also increase genetic diversity over transplant techniques (Boyer *et al*. 2008).

-- Transplant Eelgrass Remotely with Frame Systems to establish eelgrass in areas of high wave action but with suitable light and substrate conditions. The purpose would be to test the ability of TERFs to provide stable structures for the initial establishment of

eelgrass in more wave-prone areas.

-- Consider dredging projects in selected shoaled areas at carefully controlled depths suitable for eelgrass habitat, coupled with the use of BDSBs, to create additional water volume that could sustain eelgrass.

Upon approval of the Plan, the City will prepare an action plan for implementation of these methods. It is expected that these programs will be undertaken in both stable and transitional areas to determine their effectiveness.

INITIAL OFF-SETTING MEASURES

The City will undertake several programs to provide an off-setting of the initial impacts to eelgrass associated with the Plan. While eelgrass does re-establish itself rapidly in areas subject to temporary disturbance, some initial losses may occur during the initial period of plan implementation. These measures will have the effect of promoting eelgrass growth in the Newport Harbor immediately upon approval of the management plan by the agencies and are in addition to the measures to be implemented as part of the overall plan. The measures proposed include:

-- An annual $10,000 contribution to the CoastKeeper or other appropriate non-profit organization over the next three years starting in 2011 directed towards a program to promote education on eelgrass and to initiate restoration research to re-establish eelgrass in the Back Bay. In 2008, the Coastkeeper initiated a partnership with the Bay Back Science Center and the California Department of Fish and Game. It includes an educational program for Life Science and Biology classes and provides teachers with training and classroom materials on eelgrass protection. In addition, the program includes an eelgrass cultivation and research program that is directed towards answering critical questions on the future conservation, management, and restoration of eelgrass in Newport Bay. Experimental tanks have been installed to test hypotheses on how best to establish eelgrass in the Upper Bay. The donation will be used to support these programs and to encourage the experimental transplantation of eelgrass in Newport Bay.

-- Distribution and ecological studies on eelgrass conducted by the City will be made available on-line and available to the Southern California Eelgrass Monitoring Regional Program. This program is aimed at improving the knowledge of eelgrass distribution in southern California and is coordinated with the Southern California Coastal Water Research Program (SCCWRP). The level of information collected by the City is consistent with the goals of the program and the City will cooperate with SCCWRP to assure data consistency with the program.

-- The City will promote the use of dock designs that may improve light intensity below

and adjacent to docks. While the City is not in a position to require that dock owners retro-fit dock and piers, they can provide information to dock owners who are seeking changes or modifications on methods that could be employed that would improve dock design such as translucent or grated deck materials, light concentrators, or other materials that may be suitable for use in areas where eelgrass is present. The City will work with the NMFS and DFG to identify those materials or modifications that have been proven effective and do not compromise safety and structural strength.

-- The City will provide information on use of environmental friendly mooring buoys to yacht clubs and other facilities that have mooring fields in areas that may support eelgrass. This educational program will provide these users with information on the installation of these mooring devices and the environmental benefits. Most mooring fields have double point mooring that do not result in anchor chain circles. However, the Carnation Cove mooring field does have single moorings that are maintained and rented by Orange County. The City will request that the County consider the use of these types of environmental friendly moorings.

REPORTING AND ADAPTIVE MANAGEMENT

The City will prepare annual reports, due in December of each year, on the activities undertaken to implement and manage the Plan. The report will document the current EMT Tier level under which the City is operating and the permits that have been issued by the agencies and the amount of eelgrass that has been impacted. The City will also provide documentation on the activities that have been undertaken, the status of the Initial Off-Setting Measures, and technical reports that have been completed during the reporting period. The report will be submitted to the National Marine Fisheries Service, the Corps of Engineers, the Santa Ana Regional Water Quality Control Board, the Department of Fish and Game, and the California Coastal Commission.

As new information is made available on eelgrass distribution and ecology in the project area, the City will, in concert with agency review and input, may propose revisions to the Plan and the EMT thresholds. In addition, new technology related to eelgrass ecology will also be incorporated into possible revisions. The resource and permitting agencies will review any new proposals and will provide consent to implement changes.

Should eelgrass populations fall precipitously or remain at Tier 3 for two sampling periods, the City and the agencies will meet to review actions needed to preserve and protect eelgrass in the lower Bay.

ACKNOWLEGEMENTS

This Plan was prepared by WRA, Inc. for the Harbor Resources Division. Dr. Michael Josselyn was the primary preparer of the Plan. Larry Paul of Larry Paul and Associates and Chris Miller of the Harbor Resources Division participated in the revisions of the Plan. The participation of the National Marine Fisheries Service during the review and revision of the Plan, especially that of Bryant Chesney, is greatly appreciated.

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APPENDIX A:

EELGRASS SURVEY DATA FOR LOWER NEWPORT BAY

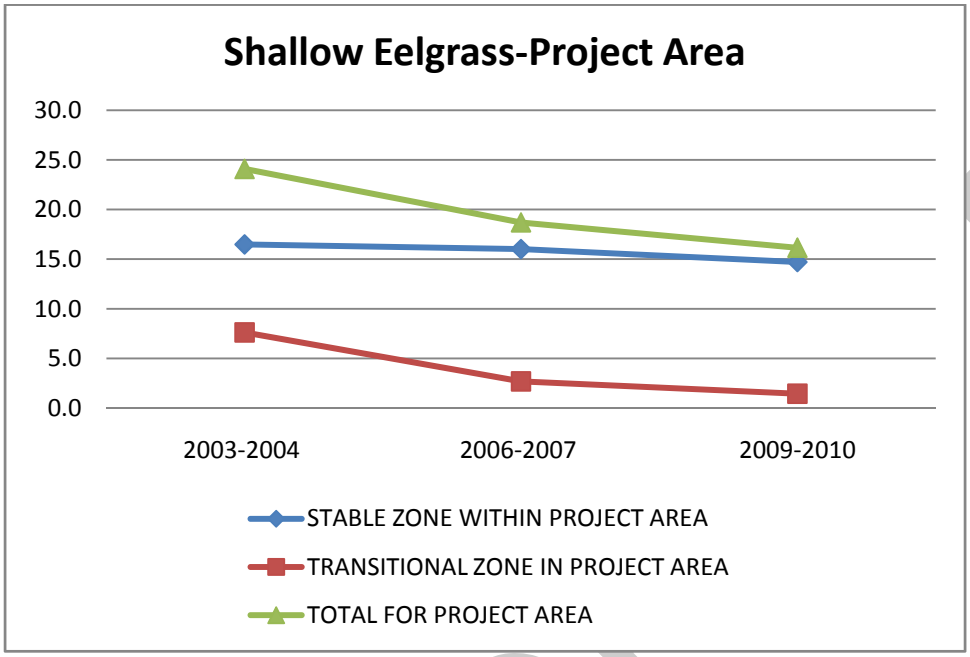
WORK COMPLETED UNDER CONTRACT TO THE HARBOR RESOURCES DIVISION

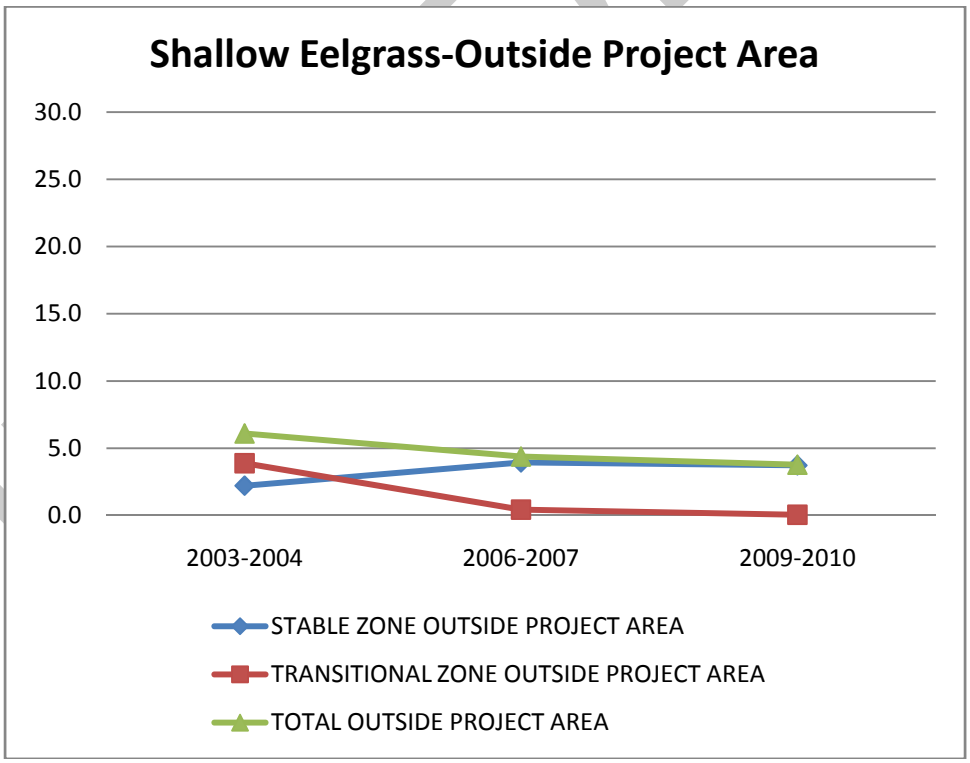
BY

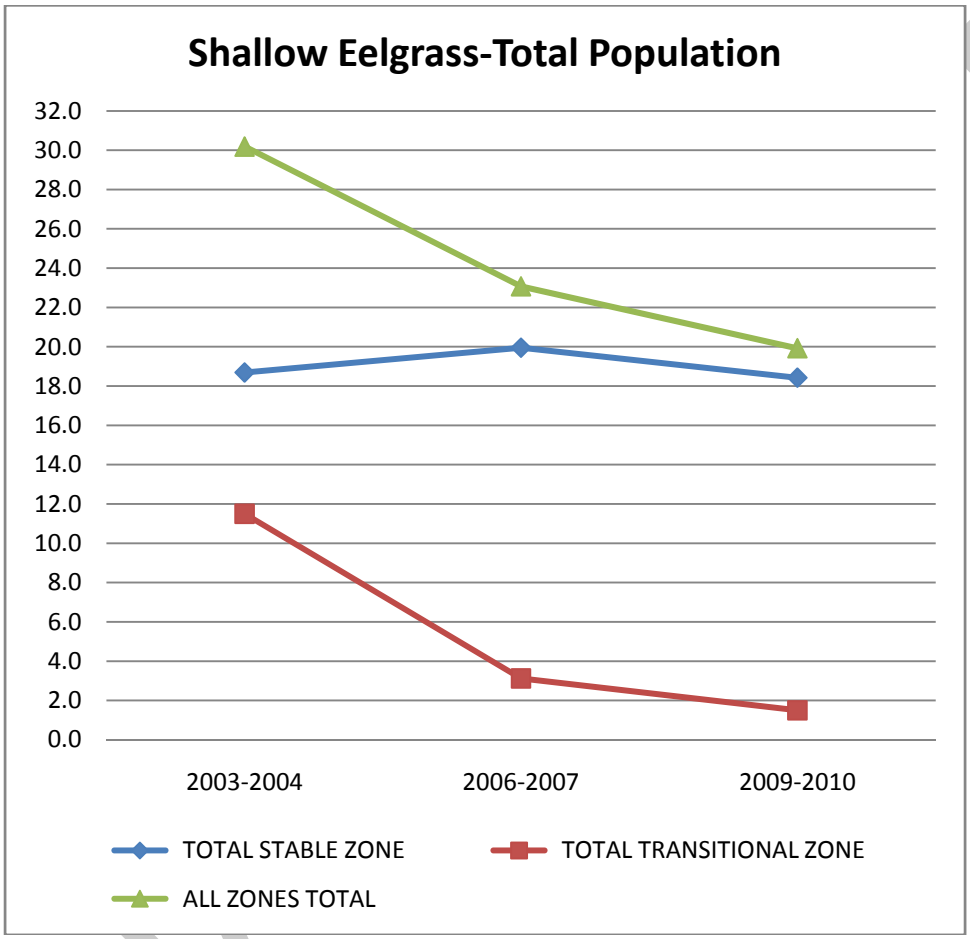
COASTAL RESOURCES MANAGEMENT, INC.
3334 EAST COAST HIGHWAY
CORONA DEL MAR, CA 92625

SHALLOW WATER EELGRASS WITHIN PROJECT AREA	2003-2004	2006-2007	2009-2010	MEAN (acres)	STANDARD DEVIATION	95% CONFIDENCE LIMITS
STABLE ZONE						
Balboa Island/Collins Isle	3.66	3.04	2.27	2.99	0.70	0.79
Bay Island	0.11	0.05	0.04	0.07	0.04	0.04
Corona del Mar (Bayside)	8.72	8.41	8.59	8.57	0.16	0.18
East Balboa Peninsula	1.47	1.44	1.37	1.43	0.05	0.06
Grand Canal	0.90	1.14	0.62	0.89	0.26	0.29
Linda Isle Inner	0.05	0.53	0.33	0.30	0.24	0.27
Yacht Club/Basins	1.57	1.40	1.48	1.48	0.09	0.10
STABLE ZONE WITHIN PROJECT AREA	**16.48**	**16.01**	**14.70**	**15.73**	**1.53**	**1.73**
TRANSITIONAL ZONE						
Balboa Island/Collins Isle	1.85	0.95	0.58	1.13	0.65	0.74
Bay Island	0.01	0.00	0.00	0.00	0.01	0.01
Bayshores	0.73	0.65	0.00	0.46	0.40	0.45
Castaways	0.00	0.00	0.00	0.00	0.00	0.00
Harbor Island	2.22	0.62	0.40	1.08	0.99	1.13
Lido Isle	0.02	0.00	0.00	0.01	0.01	0.01
Inner DeAnza Peninsula	0.00	0.00	0.00	0.00	0.00	0.00
Linda Isle Inner	0.04	0.03	0.03	0.03	0.00	0.00
Linda Isle Outer	1.27	0.11	0.07	0.48	0.68	0.77
Mariner's Mile	0.23	0.07	0.07	0.12	0.09	0.11
North Balboa Channel and Yacht Basin	0.61	0.11	0.12	0.28	0.28	0.32
West Balboa Peninsula	0.03	0.03	0.01	0.03	0.01	0.01
Outer DeAnza Peninsula	0.00	0.00	0.00	0.00	0.00	0.00
Yacht Club/Basins	0.59	0.11	0.16	0.29	0.26	0.30
TRANSITIONAL ZONE IN PROJECT AREA	**7.61**	**2.69**	**1.45**	**3.92**	**3.41**	**3.85**
TOTAL FOR PROJECT AREA	**24.09**	**18.69**	**16.15**	**19.64**	**4.93**	**5.58**

SHALLOW WATER OUTSIDE PROJECT AREA	2003-2004	2006-2007	2009-2010	MEAN (acres)	STANDARD DEVIATION	95% CONFIDENCE LIMITS
STABLE ZONE						
Balboa Island/Collins Isle	0.91	0.51	0.20	0.54	0.36	0.40
Bay Island	0.00	0.00	0.00	0.00	0.00	0.00
Corona del Mar (Bayside)	0.78	0.66	1.77	1.07	0.61	0.69
East Balboa Peninsula	0.16	0.11	0.02	0.10	0.07	0.08
Grand Canal	0.00	0.00	0.00	0.00	0.00	0.00
Linda Isle Inner	0.10	2.62	1.62	1.45	1.27	1.44
Yacht Club/Basins	0.26	0.03	0.11	0.13	0.11	0.13
STABLE ZONE OUTSIDE PROJECT AREA	**2.21**	**3.95**	**3.72**	**3.29**	**0.94**	**1.07**
TRANSITIONAL ZONE						
Balboa Island/Collins Isle	0.25	0.06	0.00	0.10	0.13	0.15
Bay Island	0.00	0.00	0.00	0.00	0.00	0.00
Bayshores	0.26	0.02	0.00	0.09	0.14	0.16
Castaways	0.13	0.00	0.00	0.04	0.08	0.09
Harbor Island	0.50	0.09	0.04	0.21	0.25	0.28
Lido Isle	0.00	0.00	0.00	0.00	0.00	0.00
Inner DeAnza Peninsula	0.21	0.01	0.00	0.07	0.12	0.13
Linda Isle Inner	0.09	0.09	0.00	0.06	0.05	0.06
Linda Isle Outer	1.63	0.16	0.00	0.60	0.89	1.01
Mariners Isle	0.00	0.00	0.00	0.00	0.00	0.00
North Balboa Channel and Yacht Basin	0.04	0.00	0.00	0.02	0.03	0.03
West Balboa Peninsula	0.00	0.00	0.00	0.00	0.00	0.00
Outer DeAnza Peninsula	0.77	0.00	0.00	0.26	0.44	0.50
Yacht Club/Basins	0.01	0.00	0.00	0.00	0.01	0.01
TRANSITIONAL ZONE OUTSIDE PROJECT AREA	**3.89**	**0.43**	**0.05**	**1.46**	**2.11**	**2.39**
TOTAL OUTSIDE PROJECT AREA	**6.10**	**4.38**	**3.77**	**4.75**		
SHALLOW WATER EELGRASS TOTALS						
TOTAL STABLE ZONE	**18.69**	**19.95**	**18.42**	**19.02**	**0.82**	**0.92**
TOTAL TRANSITIONAL ZONE	**11.50**	**3.12**	**1.50**	**5.37**	**5.37**	**6.07**


Shallow Eelgrass-Project Area
30.0
25.0
20.0
15.0
10.0
5.0
0.0
2003-2004
2006-2007
2009-2010
STABLE ZONE WITHIN PROJECT AREA
TRANSITIONAL ZONE IN PROJECT AREA
TOTAL FOR PROJECT AREA


Shallow Eelgrass-Outside Project Area
30.0
25.0
20.0
15.0
10.0
5.0
0.0
2003-2004
2006-2007
2009-2010
STABLE ZONE OUTSIDE PROJECT AREA
TRANSITIONAL ZONE OUTSIDE PROJECT AREA
TOTAL OUTSIDE PROJECT AREA


Shallow Eelgrass-Total Population
32.0
30.0
28.0
26.0
24.0
22.0
20.0
18.0
16.0
14.0
12.0
10.0
8.0
6.0
4.0
2.0
0.0
2003-2004
2006-2007
2009-2010
TOTAL STABLE ZONE
TOTAL TRANSITIONAL ZONE
ALL ZONES TOTAL

2004 Eelgrass Extent within Project Area

Legend

- Project Area
- 2004 Eelgrass in the Project Area
- 2004 Shallow Water Eelgrass Outside Project Area

Close Up View

0 0.125 0.25 0.5 Miles

Path: L:\Acad 2000 Files\17000\17169\gis\ArcMap\Impact Slides\2011 Impacts\2004 Impacts.mxd

2007 Eelgrass Extent within Project Area

Legend

- Project Area
- 2007 Eelgrass in the Project Area
- 2007 Shallow Water Eelgrass Outside Project Area

Close Up View

0 0.125 0.25 0.5 Miles

Path: L:\Acad 2000 Files\17000\17169\gis\ArcMap\Impact Slides\2011 Impacts\2007 Impacts.mxd

2010 Eelgrass Extent within Project Area

Legend

- Project Area
- 2010 Eelgrass in the Project Area
- 2010 Shallow Water Eelgrass Outside Project Area

Close Up View

0 0.125 0.25 0.5 Miles

Path: L:\Acad 2000 Files\17000\17169\gis\ArcMap\Impact Slides\2011 Impacts\2010 Impacts.mxd

CITY OF

NEWPORT BEACH

Harbor Commission Staff Report

Agenda Item No. 2
January 9, 2013

TO: HARBOR COMMISSION

FROM: Public Works Department
Chris Miller, Harbor Resources Manager
949-644-3043, cmiller@newportbeachca.gov

TITLE: Regional General Permit (RGP-54) – A Recommended Approach for 2014

ABSTRACT:

The Harbor Commission's Dredging Subcommittee will discuss the City's Regional General Permit and recommend an approach for Council to consider for the new permit in 2014.

RECOMMENDATION:

1. Advise the Harbor Resources Manager to proceed with a Council recommendation for "Option 1" for the upcoming Regional General Permit which includes additional features not included in the current permit. The sediment testing and permitting costs would also be funded by the City.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item upon the Commission's recommendation to Council. However, if Council decides to proceed with the recommended approach, a Budget Amendment will be required at that time. Depending on the option chosen, the costs could vary between (estimated) $100,000 to $400,000, but this is largely unknown at this time.

DISCUSSION:

The Harbor Commission's approved Objectives for 2012-13 focus on "ensuring the long term welfare of Newport Harbor" as well as "promoting Newport Harbor as a Preferred and Welcoming Destination." The first objective within this group focuses on dredging, and states that the Harbor Commission should:

> *"Investigate potential solutions to two long-standing obstacles to maintenance dredging of private docks and areas of the harbor that are outside the scope of USACE projects. The primary obstacles are (1) the difficult permitting process and (2) a lack of small scale dredging operators. New environmental permitting strategies and effective deployment of smaller scale dredging equipment (public or private) will be studied and benchmarked with other California harbor communities."*

With this objective in mind, the Harbor Commission tasked the dredging subcommittee to evaluate the City's current Regional General Permit ("RGP-54") and consider alternative

approaches to the next, upcoming RGP for 2014. (The City currently has an "interim RGP" permit which is valid until Spring 2014.)

RGP-54 History

The RGP is loosely referred to as the Regional General Permit because that is the name that the Army Corps of Engineers ("Corps") uses for their permit. In reality, there are actually three distinct permits issued by three different agencies to the City for dredging under docks, and those permits come from the Corps, Coastal Commission and the Water Board.

Briefly, the RGP-54 has been in existence for over 20 years, and has evolved slightly over time. Some major provisions of the permit are:

1. It can be used for residential and commercial piers throughout the harbor.
2. Most of the harbor is included in the permit, with some areas excluded due to elevated mercury levels.
3. There is a maximum cap of 1,000 cy dredged per parcel.
4. There is a 20,000 annual maximum for the entire harbor.
5. No dredging within 15' of eelgrass.
6. Eelgrass, Caulerpa and grain size analysis is required.
7. Dredging is allowed to -7 MLLW + 1' overdredge.
8. Permit is good for 5 years. Complete sediment testing is required every 5 years.
9. Permit does not include dock construction.
10. The City holds the permit. The property owners therefore apply to the City, who then has to submit their application to the agencies for final review (a 60 day process).

Most of the points above limit the use of the permit, and do not reflect the needs of the community today. As examples, (1) the dredge depth should be increased to at least -9 MLLW, (2) the per parcel maximum should be increased, and (3) the annual harbor maximum should be increased. Most importantly, however, are the restrictions on eelgrass which are the primary reasons why nearshore dredging has come to a complete stop in the harbor for most people. The City is concurrently working on a Newport specific eelgrass plan which, if incorporated into the RGP, will provide much needed relief to the community while still protecting the resource.

Subcommittee Work

The Harbor Commission's subcommittee held two meetings with some key members of the public, and staff from Anchor QEA, to review the City's current permit and to explore new ideas for the upcoming permit. Some of the key comments received were the restrictive nature of the permit as pertained to depth, and of course, eelgrass. Anchor QEA assisted with the discussion by providing helpful insight as to the permitting process in the regulatory world of today.

In addition, Chair Doug West and staff met with the Corps Regulatory Division to learn about other permits in the region, and how they might be similar to Newport's RGP. The Corps also had a chance to review the committee's recommended approach as described on the attached table.

Recommendation

The subcommittee recommends the City provide a similar RGP-54 permit but with substantial changes as outlined in the attached table and as mentioned above. The subcommittee also felt it was still appropriate for the City to provide the sediment testing and permitting functions of the permit as opposed to bifurcating those responsibilities between the applicant (dock owner) and the City. As the subcommittee quickly realized, the permitting process is complex, and would be an impossible, or extremely expensive endeavor for each individual property owner to incur on their own.

Next Steps

Upon the Commission's recommendation to staff this evening, staff will present the plan to the City Council on January 22 at the Study Session to familiarize the Council on the subject. Then, on February 12, staff will formally present the plan at the regular meeting and request a budget amendment for implementation. (Costs to be determined.) Because staff did not know the direction the Commission or Council wanted to go with the new RPG permit when the budget was formulated last year, a line item was not included in this year's budget. (Note: The current budget year ends June 30, 2013.)

Nevertheless, it is important that work begin as soon as possible to implement the plan because the steps involved, especially the agency negotiation process, are extremely time consuming. Ideally, the City would have the permit in place by Spring 2014 – a deadline that will rapidly approach.

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find this action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item).

Submitted by:

Chris Miller

Attachment: Existing RGP-54 vs. Recommended Approach for 2014

Existing RGP-54 vs. Recommended Approach for 2014

RGP 54	Maintain Existing RGP 54	Option 1 – City Sediment Characterization
Annual Maximum Volume	20,000 cy	150,000 cy
Individual Project Volume Limit	1,000 cy	None
Maximum Dredge Depth	Maximum of -7 feet MLLW plus 1 foot overdredge; deeper if can be supported by historical design depth	Maximum of -9 feet MLLW plus 1 foot overdredge; deeper if can be supported by historical design depth
Sediment Testing	Periodic bay-wide characterization	Rolling, focused characterization in which the bay is divided into units. Historical data would be used to guide sediment testing.
Eelgrass	No impacts allowed	Address impacts through City's bay-wide eelgrass program. The eelgrass program would be independent of the RGP 54 permit and could be used for RGP 54 projects and non-RGP 54 projects.
Structures	No maintenance allowed	Repair and replacement of docks, bulkheads, and piles with similar structures. Reconfiguration of existing docks to meet modern standards and boater needs would be allowed.
Application Review	City submits files to agencies monthly and waits for agency verification (varies from 30 days to several months)	Tiered approach in which authority is delegated to the City to approve small projects without agency review; allow 30-day review by agencies for medium projects; await approval from agencies for large projects. Small: less than 1000 CY of dredging and/or repair of existing structures Medium: between 1000 CY of dredging and 5000 CY of dredging and/or in-kind replacement of existing structures Large: more than 5000 CY of dredging and/or replacement of existing structures with expansion
Shading	Not applicable	Develop bay-wide program to track shading changes similar to proposed eelgrass management program

Existing RGP-54 vs. Recommended Approach for 2014

RGP 54	Maintain Existing RGP 54	Option 1 – City Sediment Characterization
Water Quality Monitoring	Basic monitoring required by Regional Water Quality Control Board during the first individual dredging episodes of a given type of dredging. If the monitoring results are within the receiving water limitations specified in the WQC, then subsequent monitoring during individual projects will not be required if the total dredging duration of a project will be less than two days.	Tiered approach to monitoring in which monitoring is not required for small projects and basic monitoring frameworks are developed for medium and large projects
Applicable Users	Anyone within the permit area	Anyone within the permit area
Disposal	Beach nourishment, ocean disposal, upland disposal or confined disposal facility	Beach nourishment, ocean disposal, upland disposal
SLC Dredging Lease	Valid through 2015	A new lease will be required for work within submerged tidelands granted to the County of Orange
Fee Structure	Single fee of $1640 to the City and $77 to the RWQCB	Tiered City fee structure based on project size category

CITY OF

NEWPORT BEACH

Harbor Commission Staff Report

Agenda Item No. 3
January 9, 2013

TO: HARBOR COMMISSION

FROM: Public Works Department
Chris Miller, Harbor Resources Manager
949-644-3043, cmiller@newportbeachca.gov

TITLE: Virgin Oceanic Mooring in Newport Harbor – Yearly Review

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ABSTRACT:

The Harbor Commission will conduct the annual review of the vessel Cheyenne's mooring in Newport Harbor.

RECOMMENDATION:

1. Receive and file; or
2. The Harbor Commission may reconsider the future of the Cheyenne's mooring in Newport Harbor.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

At the June 2012 meeting, the Harbor Commission approved the vessel Cheyenne to moor in Newport Harbor and to pay the standard mooring rate starting from January 2012 onward. The Commission also requested that the Cheyenne's mooring arrangement be reviewed in December 2012, or at the next available meeting. (The Commission did not meet in December.)

The Cheyenne is currently located near the "C" mooring field just west of the Balboa Island Ferry. Harbor Resources has received some complaints about the size of the vessel at that location, and that it also impacts the visibility of the Petrosea Fuel Dock from the water therefore affecting business.

ENVIRONMENTAL REVIEW:

Staff recommends the Harbor Commission find this action is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines,

California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

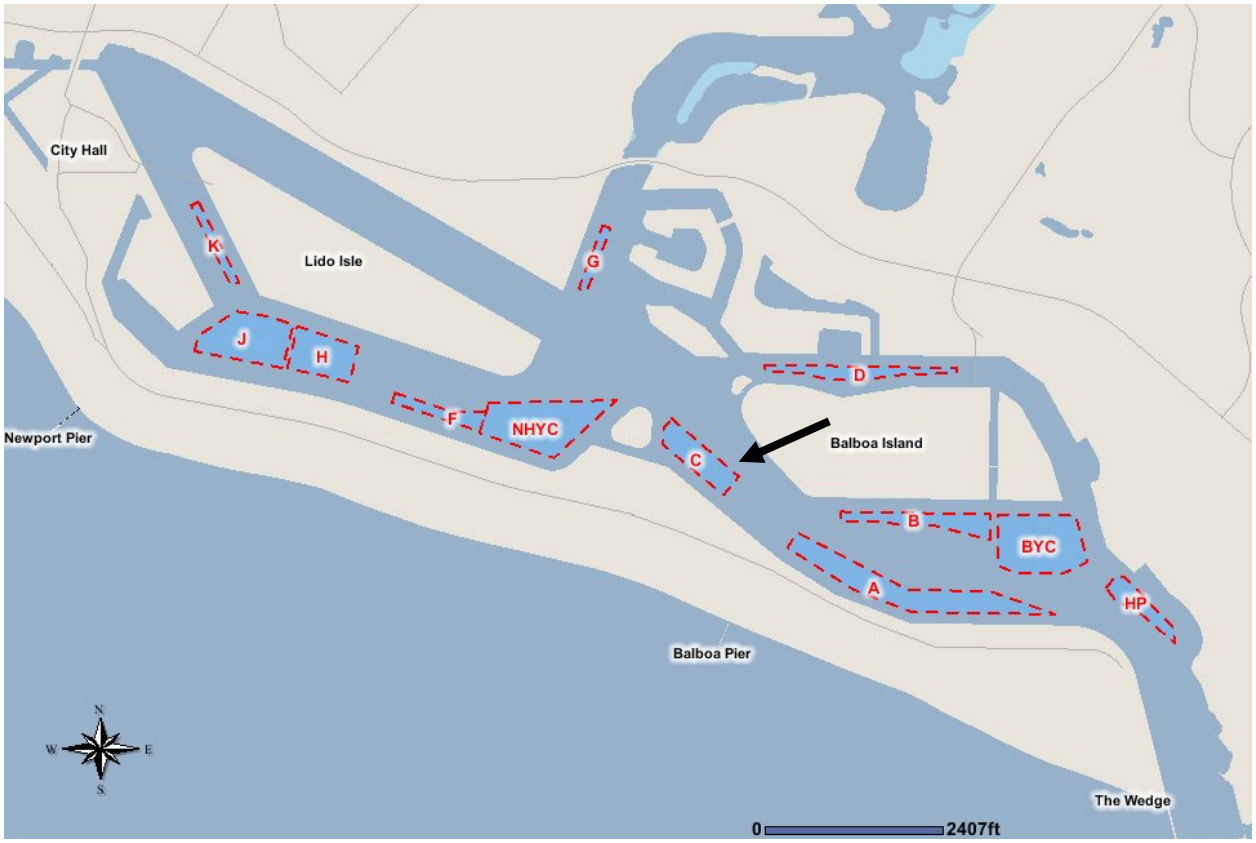
The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Harbor Commission considers the item).

Submitted by:

Chris Miller

Attachment:
1. Vicinity map
2. Cheyenne pictures

Vicinity Map



Cheyenne Pictures


Google